

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BRENDAN ABBOTT, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

No. 4:22 CV 587 CDP

VITAL PHARMACEUTICALS, INC.,)
d/b/a “VPX Sports,” et al.,)

Defendants.)

MEMORANDUM AND ORDER

Plaintiff Brendan Abbott brings this putative class action against defendants Vital Pharmaceuticals, Inc., and Does 1 through 10, alleging that defendants falsely, misleadingly, and deceptively marketed health-related products in violation of the Missouri Merchandising Practices Act. Abbott also brings claims of breach of contract, breach of implied warranty, and unjust enrichment. The Doe defendants have not yet been served with process, and more than 90 days have passed since Abbott filed his amended complaint. Vital Pharmaceuticals has now filed a Suggestion of Bankruptcy, invoking the automatic stay provisions of 11 U.S.C. § 362. In light of this notice and the resulting automatic stay, I will stay this action as to Vital Pharmaceuticals. I will order Abbott to show cause why I should not dismiss the Doe defendants without prejudice for his failure to timely serve those

defendants under Rule 4(m), Federal Rules of Civil Procedure. *See Evans v. Lombardi*, 37 F.3d 1503 (8th Cir. 1994) (unpublished) (per curiam) (Rule 4(m)'s service requirements apply to Doe defendants).

Accordingly,


IT IS HEREBY ORDERED that this action is **STAYED** under 11 U.S.C. § 362 as to defendant Vital Pharmaceuticals, Inc., during the pendency of its bankruptcy proceedings.

IT IS FURTHER ORDERED that no later than **December 14, 2022**, and every ninety (90) days thereafter, defendant Vital Pharmaceuticals, Inc., shall file a status report on the bankruptcy proceedings and make an appropriate motion as to the extension, modification, or lifting of the stay. Within seven (7) days of the termination of its bankruptcy proceedings, defendant shall file with this Court a notice of such termination.

IT IS FURTHER ORDERED that defendant Vital Pharmaceuticals, Inc.'s Motion to Dismiss [15] and Motion to Strike [17] are **DENIED without prejudice** to refiling after the stay is lifted.

IT IS FURTHER ORDERED that plaintiff Brendan Abbott shall show cause not later than **October 24, 2022**, why his and the putative class's claims against defendants Does 1 through 10 should not be dismissed without prejudice for failing to effectuate timely service. Failure to timely comply with this Order

will result in the dismissal without prejudice of plaintiff's and the putative class's claims as to any unserved defendant.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 14th day of October, 2022.